

Mauch Chunk and Borough of Mauch Chunk) agreeing to inter the remains of Jim Thorpe on Borough land in agreement for changing the names and consolidation of the two Boroughs.

5. As Jim Thorpe's widow, Patricia Thorpe had the sole responsibility and right over the disposition of her deceased husband's remains pursuant to California State Law.

6. This Federal Court does not have jurisdiction to hear the matters complained of in the Plaintiffs' complaint under the probate exception to federal jurisdiction.

7. The Brief in Support of the Defendant Borough of Jim Thorpe along with the Statement of Facts and Exhibits thereto are filed simultaneously with this Motion and incorporated herein by reference.

8. Pursuant to F.R.C.P. 56, summary judgment should be granted when there is no genuine dispute as to any material fact and the Movant is entitled to judgment as a matter of law.

9. There are no genuine disputes of facts relevant to the California state probate proceeding precluding this action.

WHEREFORE, under the Probate Exception to Federal Jurisdiction, the Defendant prays that this Honorable dismiss the Plaintiffs' action in federal court.

DOCTRINE OF LACHES

10. The Native American Graves and Repatriation Act (hereinafter "NAGPRA") became law on or about November 16, 1990.

11. At the time NAGPRA became law, Plaintiffs John Thorpe, Richard Thorpe and William Thorpe had knowledge that Jim Thorpe had been buried in the Borough of Jim Thorpe.

11. At the time NAGPRA became law, Plaintiff Sac and Fox Nation of Oklahoma had knowledge that Jim Thorpe was buried in the Borough of Jim Thorpe.

12. Despite this knowledge, Plaintiffs waited over twenty (20) years after NAGPRA had been passed before bringing forth an action under it.

13. As such, Plaintiffs are barred from bringing forth a cause of action based on NAGPRA under the Doctrine of Laches.

14. The Brief in Support of the Defendant Borough of Jim Thorpe along with the Statement of Facts and Exhibits thereto are filed simultaneously with this Motion and incorporated herein by reference.

15. Pursuant to F.R.C.P. 56, summary judgment should be granted when there is no genuine dispute as to any material fact and the Movant is entitled to judgment as a matter of law.

16. There are no genuine disputes of facts relevant to the Doctrine of Laches barring this action.

WHEREFORE, the Defendant, Jim Thorpe Borough of Pennsylvania, respectfully requests that this Honorable Court grant its Motion for Summary Judgment and dismiss the Plaintiffs' action under the Doctrine of Laches.

Respectfully submitted,

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Dated: December 31, 2012

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